

Water Pollution Control Advisory Council Meeting
February 17, 2000--9:40 am - 11:55 am
Haynes Auditorium of the Montana Historical Society

Attendees

Council Members:

Roger Noble-Land & Water Consulting
Barb Butler-City of Billings Solid Waste
Don Skaar-Mt Fish Wildlife & Parks
Richard Parks-Fishing Outfitters of America

Other Attendees:

Bob Raisch-Dept of Environmental Quality (DEQ)
Chris Levine-DEQ
Abe Horpestad-DEQ
Rosa Sada-DEQ
Bonnie Lovelace-DEQ
Lou Moore DEQ
Tom Ellerhoff DEQ

Approval of Minutes

The Water Pollution Control Advisory Council was called to order by Chairman Richard Parks at 9:43 a.m. Chairman Parks asked if there were any changes to the minutes from the Dec 8, 1999 meeting. There were no changes and the minutes were approved as written. Bob Raisch presented a short list of briefing items to go over starting with lawsuits.

Updates on Lawsuits

TMDL Lawsuit

The court found in favor of EPA on all counts except one and that was that EPA's approval of an inadequate number of TMDL's was arbitrary. The court ordered the parties to brief the court on remedies to address Montana's lack of progress. The EPA has asked the court to reconsider that decision based on the fact that they (EPA) had no authority to approval a specific number of TMDL's. EPA also asked that if the court decided against that to remand the decision back to the EPA so that they can consider whether there was sufficient progress in Montana. Montana supports EPA's position on both points. However the state feels that our progress has been acceptable. The plaintiff's recommended that the court appoint a "special master" to oversee the progress that the state is making the court would maintain jurisdiction through this "special master". They also recommended that definitive milestones be set for the amount of TMDL's done per year. At this time there has been no decision made by the court but some decision should be made any day.

Endangered Species Lawsuit

The state has answered interrogatories with a lot of questions concerning a subset of water bodies which appear to be Bull Trout habitat. Plaintiffs also asked questions about progress on other impaired streams. The state has met with the US Fish and Wildlife Service and the EPA in Helena. Montana still maintains that EPA's approval of the TMDL list is not subject to Section 7 of the endangered species act because it is not a Federal action.

Upper Blackfoot Water Quality Standards

On the Council's recommendations from last meeting, DEQ did meet with the Forest Service to further define what they thought was an adequate time frame to develop and implement the restoration plans for the upper Blackfoot area. The Forest Service now supports the Department's recommendation of eight years. The Board of Environmental Review (BER) gave approval to initiate rule making for temporary standards for the upper Blackfoot. There is a hearing scheduled for the temporary standards for March 14, 2000. The BER should take final action at their May 12, 2000 meeting.

Coal Bed Methane

There was quite a bit of discussion from the Council at the last meeting concerning a lead agency in regards to the coal bed methane process and coordination between agencies. There is still no lead agency but there has been some activity toward coordination. There was a meeting with the State and Federal agencies that are involved with coal bed methane and they decided that there needed to be a data base put together that consolidates all the information that is available on coal bed methane. They also identified the need for a monitoring plan to address local impacts as well as regional impacts. DEQ met with several members of the Miles City BLM staff who are preparing the EA for the BLM. BLM is taking very seriously the comments provided to them by DEQ. One issue the BLM brought up was that discharging water during the winter will have a spreading effect over a wider area, and in the spring the salt content may denude the landscape which will also increase the opportunity for erosion.

Abe Horpestad said that for planning purposes in the EA they are considering some values for permissible changes in water quality. The BLM is thinking of setting a salinity increase that should not exceed 1,000 TDS and the SAR should not exceed 3. The Wyoming office of the BLM developed an EIS for coal bed methane using a target of 5,000 wells. By the time the EIS was completed 5,000 wells had already been drilled. Each of the wells produces 20 gallons of water a minute.

Don Skaar asked if there a dilution effect on the Tongue River going toward Miles City due to diversions or dams in the stream?

Abe Horpestad responded that all the wells are upstream. As you get closer to Miles City you are out of the coal bed methane area. There are no significant tributaries down stream of the area associated with coal bed methane.

Chairman Parks expressed concern that the whole process is out of control especially considering the experience that Wyoming has had. Commitments are being made on the resource without anybody understanding what the effects are. The data that Abe showed us means that we are fairly close to the edge.

Roger Noble asked because of the cumulative impacts of the whole thing why don't they have to follow the MEPA process.

Abe Horpestad: Numerous companies are involved and as a Department we will follow MEPA. however agencies are only reviewing the permit applications that have been submitted, and a look at cumulative effects has not occurred.

Bob Raisch stated that well requests that come before DEQ would be subject to a MEPA review. The question is when does a state agency make a decision that goes beyond the permits in front of them and begin to take into account the cumulative affects.

Abe Horpestad said that there is a concern for the quantity of water being pumped out of the ground, and it may take generations before the aquifers are back to normal.

Richard Parks stated that there is already a problem in Wyoming where people who had relied on ground water for stock and domestic use had lost wells. The recommendation we made at the last meeting is still the core of the problem. Yet they are still issuing permits and there is no structure in place for who is in charge.

Bob Raisch said that the Council is supposed to advise the Department and the director and that the Council has the ability to make recommendations.

Richard Parks said that the council should make a clear recommendation to the governor in the form of a letter stating the councils fears and make some recommendation. The Council has never before drafted a letter to anyone. The minutes have reflected any consensus on recommendations and that is reported to the director and the BER. This has a level of urgency that the director should be reminded of our concern and asked to communicate this concern directly to the Governor. It is time for all the agencies involved (DEQ, DNRC, and the Board of Oil and Gas) to be brought together in some sort of public process to explore the cumulative effects of large scale coal bed methane development. Chairman Parks said that he would draft a letter and circulate it for council approval and have it carried to the director of DEQ.

Outstanding Resource Waters Bob Raisch

The hearing was held January 19, 2000 there was no testimony presented. The BER will adopt those rules on March 17, 2000.

Stone Smurfitt Discharge Permit

Department is proposing changing the discharge permits for effluent limits for nitrogen and phosphorous for the pulp mill near Missoula. The change that the Department is trying to do is to change the effluent levels to what they were historically. There has been better monitoring done with new wells put in place concerning seepage from the pond. The indication is that the seepage rate is higher than the old wells indicated. The correlation between the data from the old and new wells has been used to make some adjustments to the effluent limits to acknowledge the more accurate measurement of the seepage. The permit is out for public comment and the comments are under review.

What are the concerns that came in on the comments?

The concerns are that it looked like the emission limits were climbing and it looked to the public like we were allowing for more effluent discharge than in the past. There were concerns about the discharges raising the temperature of the river. There were also comments on the length of the mixing zone for Stone Container.

Richard Parks stated that there was an indication that the final permit incorporate different numbers than the original proposal had. Is there a sense as to how those numbers will be different? Will they be lower to give the public some comfort that their comments have results? Bob Raisch answered that they will be lower primarily because of a mathematical error. The correlation analysis between the wells was applied to the entire discharge not just the seepage. When it is applied to the seepage only you will get lower numbers. That still needs to be finalized.

EMAP Program (Abe Horpestad)

EMAP stands for the Environmental Monitoring and Assessment Program. EPA has developed a nation wide program to assess the quality of the nation's water. Currently the EPA is working on the twelve western states. The basis of the program is that the water bodies are selected randomly. When the results are assessed you can extrapolate from the results to the water bodies as a whole. This is a four year program with sampling to begin this summer. DEQ has a small contract with EPA to assess the randomly selected sites. We are nearly done in terms of where the site is and if there is water at the site. Forty random sites will be selected per year for the next four years. Sampling involves complete physical measurements of the stream channel for periphyton analysis, aquatic insect analysis, water chemistry and fish distribution and abundance. The advantage to the state is that we will have an opportunity to get good samples and compare our new data base with the older data base. It will also give us an idea through the random sampling the percentage of the other streams in the state that are impaired.

Native Trout Recovery Program

West slope Cutthroat trout conservation agreement a broad framework on how to preserve the species. The goal is to insure long term self sustaining persistence of the sub-species within each of the five major river drainages, and to maintain the genetic diversity and life history strategies of the local populations.

Libby Asbestos Tom Ellerhoff

Soon after its was discovered that there were problems in Libby with asbestos from the old mine the Department took five ground water samples. None of them revealed the presence of asbestos. The city of Libby gets it's water from Flower Creek. It has been sampled twice. No asbestos was found in either sample. It appears the ground water is safe.

Abe Horpestad: Mining was stopped in 1990 with reclamation being done ever since. The reclamation has come down to a final bond on 125 acres and that is how the Department has become involved. There was a request to release that final 125 acres and the Department is doing an investigation to see if that bond can be released. Asbestos shows up only in the water that flows through and below the old mine site, that water is classified as C1. The water above the mine is classified A1. There has been an impoundment area built at the mine that the water runs through, with a spillway that is used for overflow. After the water filters down through the impoundment area, a toe drain lets the water out of the impoundment area. The water at the toe drain is free of asbestos, but the standing water in the impoundment area has up to 200 million fibers which is well above the standard. No data is available during the periods of overflow for

the water downstream of the impoundment site. There will be some sampling done during the spring run off this year.

Integration of Pollution Prevention in DEQ Permits Lou Moore

DEQ would like to incorporate pollution prevention into some of the regulatory processing. Pollution prevention is reducing at the source any type of pollution to the environment before it ever enters into the environment. Montana was asked by the EPA in August 1999, if we would like to be more formally involved with regulatory integration with pollution prevention. EPA notified the state that they are going to continue to provide technical assistance to the state through funding resources.

Richard Parks asked how this is going to engage the public in the process?

Lou Moore said that was a good question and one that hasn't been thought about. She would be open to suggestions or comments.

Richard Parks: The next time the consultants were in town, schedule a public segment so interested people and businesses could engage in a round table for where you can go and what you can get for information. It would be a way to start introducing more people into the process.

DEQ's Comments on EPA's proposed Regulations for TMDL's: Bob Raisch & Bonnie Lovelace

Gary Ingman was the prime mover for putting the comments together along with 10-15 staffers from DEQ and other organizations. Montana's TMDL program really accomplishes a lot of what EPA intended in their proposed regulations. DEQ was already doing a lot of the things that EPA proposed. EPA's regulations are very specific in some areas, and not in other areas, which may cause some conflicts with our statutes and the way we do business. The state's approach has always been voluntary, at least for non-point sources, and in fact the statute requires that it be a voluntary approach. EPA's proposed regulation put more emphasis on using scientific methods and monitoring to put together a TMDL that relies less on local people. It is more costly and will not be any quicker. The State does not agree with EPA's proposal to separate the list into four segments of impaired waters. First segment is waters impaired by a pollutant (specific like lead). The second would be water that is impaired by pollution (more general like flow alteration). The third is for water bodies with a TMDL that has been approved by the EPA but the water is not at standards yet and needs time to get there. The fourth is streams that are not meeting water quality standards but do to existing mechanism will reach standards by the next listing cycle. The state opposes multiple lists because it could become confusing and conceivably the water could end up on all four lists. The state should have the option to list water due to pollution and to develop TMDL's for waters that are impaired by pollution. EPA feels endangered species and drinking water problems should have priority and get immediate attention from TMDL development. The state feels that they are important but there are other factors under state statutes that also need to be addressed. The state also opposed EPA's petition process where citizens can petition EPA to list or develop a TMDL, when the state has not progressed. The state feels that petitioner's need to exhaust their remedies at the state level before they proceed to EPA, and the State should have the opportunity to respond to the petitioner's points.

Richard Parks asked where are we at in the process, and where do we go from here?

Bob Raisch responded that the comment period closed on January 20, 2000, and EPA is now reviewing the comments, with a final rule in June or July.

Richard Parks stated for clarification that EPA wants the next list to be published in conformance with the new rule.

Permit Documents Bonnie Lovelace

The proposed rules for permits have two issues that change the historic voluntary approach to non-point source, to a highly regulatory approach. DEQ opposes a highly regulatory approach when good progress is being made. There are tools already in place to address and correct an actual pollution event for a violation of the Water Quality Act. The second issue is the offset provision. EPA proposes to implement offsets under the anti degradation provision. DEQ argued that in Montana we already have the tools in place under the TMDL regulations and don't need to add an extra regulatory burden of offset in the manner EPA described.

Future Agenda Items

No actual rule making was scheduled for this meeting nor the meeting coming in April.

Bob Raisch asked if it was beneficial to conduct council meetings if no actual rulemaking is scheduled.

Barb Butler thought it was still beneficial and Don Skaar said that there were always informative things that he would not have heard otherwise. The rest of the Council agreed. Richard Parks felt it was important to meet not just to consider rule making, but also to look at the broader aspect of what's going on in the state as well. Richard also thought that if the Department was having legislative initiatives coming up at some point that would be a good subject to discuss next time or the time after. Bonnie Lovelace said that DEQ's budget and legislative requests go to the Governor's office by April 15, and we won't know what the Governor's responses will be until after that time. Even though the Department's budget and legislative proposals would be preliminary the council requested a briefing at the April 13th meeting.

The meeting was adjourned at 11:55 a.m.